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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/762,269	01/23/2004	Joseph Z. Sleiman	92835-10	5782
22463 7590 01/19/2007 SMART AND BIGGAR 438 UNIVERSITY AVENUE SUITE 1500 BOX 111 TORONTO, ON M5G2K8 CANADA			EXAMINER MAYES, MELVIN C	
			ART UNIT 1734	PAPER NUMBER
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		01/19/2007	PAPER	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

**Office Action Summary**

Application No.

10/762,269

Applicant(s)

SLEIMAN ET AL.

Examiner

Melvin Curtis Mayes

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 06 November 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,3-9 and 11-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3-9,11-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Claim Rejections - 35 USC § 112*

(1)

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

(2)

Claims 1, 3-9, 11 and 17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 claims “tamping face **supported** by the tamping labeler” however according to the specification, the tamping labeler is a part of the tamping labeler. It is not clear what Applicant means by “supported by” which implies that the tamping face is something other than a part of the tamping labeler. Further the phrase “such that it is movable...” is unclear as referring to the tamping face or the tamping labeler. According to the specification, the entire tamping labeler is movable not just the tamping face.

Claim 11 claims “tamping means for extending and retracting said bellows” and “tamping face connected to said tamping means” but it is not clear what is meant by “tamping means.” Does this refer to the vacuum and positive pressure sources and ports used to retract and extend the bellows? If so, the tamping face is not connected to these. The claim is not clear.

Claims 5 and 17 recite the limitation "said at least some." There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 103***

(3)

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

(4)

Claims 1, 3, 4, 6 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Crankshaw et al. 4,844,771 in view of Kearney 4,680,082.

Crankshaw et al. disclose a label applicator comprising vacuum receiver 26 having receiving surface 25 for receiving a label dispensed onto the surface from a web at a peeler bar, the receiver movably mounted to be movable from a retracted position adjacent the peeler bar to an extended position adjacent the labeling station for applying by tamping (tamping labeler), the receiver having ports connected to a vacuum source (vacuum holes) (col. 3). Crankshaw does not disclose that the receiving surface of the receiver has projections.

Kearney teaches that in vacuum label applicators in which labels are peeled from a backing strip and pushed across the face of the applicator, there is a progressive increase in friction between the back side of the label and the face of the applicator, which acts in opposition to the forward force on the label at the stripper edge to exert a buckling force on the label which may cause the label to become wrinkled or bunched as it travels over the applicator, an undesirable condition which can prevent proper application of labels to articles. Kearney teaches that to eliminate the problem and provide the additional benefit of reducing friction between the label and face of the applicator, the face of the applicator is provided with bars, rods, pins or the like that project outward from the plane of the face to cause a slight outward bowing of the label

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as it is pushed across the face of the applicator, the projections provided across the face in the feed direction of the labels and the holes in the face for providing vacuum provided in rows between adjacent projections (col. 5, line 54 – col. 6, line 18, col. 8, line 1 – col. 9, line 51).

It would have been obvious to one of ordinary skill in the art to have modified label applicator of Crankshaw et al. having a receiver having a receiving face for receiving a label from a backing web by providing the receiving surface with bars, rods or pins that project outward from the surface across the face in the feed direction of label, as taught by Kearney, to eliminate the problem of buckling when labels are peeled from a backing strip and pushed across the face of the applicator and provide the additional benefit of reducing friction between the label and face of the applicator. Providing the receiving surface as textured with bar projections or provided with rods or pins to form the projections (thus forming domes), with the ports (holes) in the surface between projections, would have been obvious to one of ordinary skill in the art to improve the transfer of the label to the receiver for labeling, as suggested by Kearney. By providing the receiver surface with projections as taught by Kearney, discrete projections are obviously provided which extend over only a portion of the base surface, do not completely surround the holes and maintain at least a substantial portion of the label at a stand off from the base surface of the receiver surface, as claimed.

(5)

Claims 1, 3, 4, 6-9, 11-16 and 18-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nielsen et al. 2002/0189741 in view of Kearney 4,680,082.

Nielsen et al. discloses a labelling apparatus for labelling product conveyed on a conveyor comprising: indexing turret 40 carrying a plurality of labelers 12a to 12h, each labeler

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comprising a bellows 160 having a tamping end (face) 162 perforated with pin holes 164 and a one-way valve 166; a vacuum source connected to a port and positive pressure source connected to a port to retract and extend the bellows (tamping means); and label cassette comprising a label web of release tape carrying a plurality of labels. At the label pick-up station, the turret is rotated a fixed increment to provide a bellows at the station, and the label web is advanced a fixed increment to peel the label from the release tape to be sucked to the tamping end of the bellows at the station [0021]-[0034]. Nielsen et al. do not disclose providing the tamping end (face) with projections projecting outwardly from the tamping end.

Kearney teaches that in vacuum label applicators in which labels are peeled from a backing strip and pushed across the face of the applicator, there is a progressive increase in friction between the back side of the label and the face of the applicator, which acts in opposition to the forward force on the label at the stripper edge to exert a buckling force on the label which may cause the label to become wrinkled or bunched as it travels over the applicator, an undesirable condition which can prevent proper application of labels to articles. Kearney teaches that to eliminate the problem and provide the additional benefit of reducing friction between the label and face of the applicator, the face of the applicator is provided with bars, rods, pins or the like that project outward from the plane of the face to cause a slight outward bowing of the label as it is pushed across the face of the applicator, the projections provided across the face in the feed direction of the labels and the holes in the face for providing vacuum provided in rows between adjacent projections (col. 5, line 54 – col. 6, line 18, col. 8, line 1 – col. 9, line 51).

It would have been obvious to one of ordinary skill in the art to have modified labelling apparatus of Nielsen et al. having bellows with tamping end faces for receiving a label from a

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backing web by providing the tamping end faces with bars, rods or pins that project outward from the face across the face in the feed direction of label, as taught by Kearney, to eliminate the problem of buckling when labels are peeled from a backing strip and pushed across the face of the applicator and provide the additional benefit of reducing friction between the label and face of the applicator. Providing the tamping end face as textured with bar projections or provided with rods or pins to form the projections (thus forming domes), with the holes in the tamping end face between projections, would have been obvious to one of ordinary skill in the art to improve the transfer of the label to the bellows end face for labeling, as suggested by Kearney. By providing the tamping end face with projections as taught by Kearney, discrete projections are obviously provided which extend over only a portion of the base surface, do not completely surround the holes and maintain at least a substantial portion of the label at a stand off from the base of the tamping face or which can reduce surface tension between the label and tamping face when the tamping face is wet, as claimed.

***Allowable Subject Matter***

(6)

Claims 5 and 17 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

***Response to Arguments***

(7)

Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

(8)

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melvin Curtis Mayes whose telephone number is 571-272-1234. The examiner can normally be reached on Mon-Fri 7:30 AM - 4:00 PM.

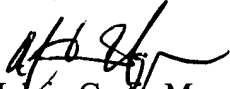
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chris Fiorilla can be reached on 571-272-1187. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would



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like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Melvin Curtis Mayes  
Primary Examiner  
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MCM  
January 16, 2007